

1 Rule 2.4. Lawyer Serving as Third-Party Neutral.

2 (a) A lawyer serves as a third-party neutral when the lawyer assists two or more
3 persons who are not clients of the lawyer to reach a resolution of a dispute or other
4 matter that has arisen between them. Service as a third-party neutral may include
5 service as an arbitrator, a mediator or in such other capacity as will enable the lawyer to
6 assist the parties to resolve the matter.

7 (b) A lawyer serving as a third-party neutral shall inform unrepresented parties that
8 the lawyer is not representing them. When the lawyer knows or reasonably should know
9 that a party does not understand the lawyer's role in the matter, the lawyer shall explain
10 the difference between the lawyer's role as a third-party neutral and a lawyer's role as
11 one who represents a client.

12 (c) A lawyer serving as a mediator in a mediation in which the parties have fully
13 resolved all issues;

14 (c)(1) may prepare formal documents that memorialize and implement the
15 agreement reached in mediation;

16 (c)(2) shall recommend that each party seek independent legal advice before
17 executing the documents; and

18 (c)(3) with the consent of all parties, may record or may file the documents in court,
19 informing the court of the mediator's limited representation of the parties for the sole
20 purpose of obtaining such legal approval as may be necessary.

21 Comment

22 [1] Alternative dispute resolution has become a substantial part of the civil justice
23 system. Aside from representing clients in dispute-resolution processes, lawyers often
24 serve as third-party neutrals. A third-party neutral is a person, such as a mediator,
25 arbitrator, conciliator or evaluator, who assists the parties, represented or
26 unrepresented, in the resolution of a dispute or in the arrangement of a transaction.
27 Whether a third-party neutral serves primarily as a facilitator, evaluator or
28 decisionmaker depends on the particular process that is either selected by the parties or
29 mandated by a court.

30 [2] The role of a third-party neutral is not unique to lawyers, although, in some court-
31 connected contexts, only lawyers are allowed to serve in this role or to handle certain

types of cases. In performing this role, the lawyer may be subject to court rules or other law that apply either to third-party neutrals generally or to lawyers serving as third-party neutrals. Lawyer-neutrals may also be subject to various codes of ethics, such as the Code of Ethics for Arbitration in Commercial Disputes prepared by a joint committee of the American Bar Association and the American Arbitration Association or the Model Standards of Conduct for Mediators jointly prepared by the American Bar Association, the American Arbitration Association and the Society of Professionals in Dispute Resolution.

[3] Unlike nonlawyers who serve as third-party neutrals, lawyers serving in this role may experience unique problems as a result of differences between the role of a third-party neutral and a lawyer's service as a client representative. The potential for confusion is significant when the parties are unrepresented in the process. Thus, paragraph (b) requires a lawyer-neutral to inform unrepresented parties that the lawyer is not representing them. For some parties, particularly parties who frequently use dispute-resolution processes, this information will be sufficient. For others, particularly those who are using the process for the first time, more information will be required. Where appropriate, the lawyer should inform unrepresented parties of the important differences between the lawyer's role as third-party neutral and a lawyer's role as a client representative, including the inapplicability of the attorney-client evidentiary privilege. The extent of disclosure required under this paragraph will depend on the particular parties involved and the subject matter of the proceeding, as well as the particular features of the dispute-resolution process selected.

[4] A lawyer who serves as a third-party neutral subsequently may be asked to serve as a lawyer representing a client in the same matter. The conflicts of interest that arise for both the individual lawyer and the lawyer's law firm are addressed in Rule 1.12.

[5] Lawyers who represent clients in alternative dispute-resolution processes are governed by the Rules of Professional Conduct. When the dispute-resolution process takes place before a tribunal, as in binding arbitration (see Rule 1.0(m)), the lawyer's duty of candor is governed by Rule 3.3. Otherwise, the lawyer's duty of candor toward both the third-party neutral and other parties is governed by Rule 4.1.

[5a] Rule 2.4(c) is intended to permit a lawyer-mediator for parties who have successfully resolved all issues between them to draft a legally binding agreement and, to the extent necessary or appropriate, record or file related papers or pleadings with an appropriate tribunal. In so doing, the lawyer will be jointly representing the parties in their common goal of effecting proper legal filings or obtaining judicial approval of their fully resolved issues. Because the parties in this situation have fully resolved their issues, they are not considered “adverse” under Rule 1.7(a)(1). ABA Model Rule 2.4 does not address the lawyer’s drafting of documents to implement the parties’ agreement.